COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

APRIL 12, 2005

Chairman Miller and members of the subcommittee on Regulatory Affairs, thank you for the opportunity to testify before you today on behalf of the National Association of Manufacturers about the impact of regulations on U.S. manufacturing. This is an issue of vital importance to our members and one that I hear a lot about in my travels and discussions with member companies.

The NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. Through our direct membership and our affiliate organizations – the Council of Manufacturing Associations, the Employer Association Group and the State Associations Group -- we represent more than a hundred thousand manufacturers.

I will do my best to handle questions about specific regulations, especially those cited by the NAM as in need of improvement, but there are thousands of federal regulations on the books. Neither I nor anyone I know can speak authoritatively about every regulation.

I take this hearing to be more about process, rather than the substantive issues that a particular regulation deals with. I hope the subcommittee members understand this limitation.

Background

A good starting point for this discussion is the list of 76 regulations that the Office of Management and Budget (OMB) released on March 9 that were deemed worthy of further consideration by agencies for improvement. This was the latest installment of the Bush Administration's Manufacturing Initiative which recognizes that manufacturing is facing unprecedented challenges. Indeed, the last recession was the first since the end of World War Two that manufacturing both led into a recession and lagged in recovery.

In the first phase of the Manufacturing Initiative, the Department of Commerce went on a listening tour around the country in 2003 to find out what was really going on. Subsequently, the Department issued a report in January 2004, "Manufacturing In America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers."

We believe this report is historic in that it is the first time since the days of Alexander Hamilton that our government has formally addressed the importance of manufacturing to our economy and actively identified policies to strengthen manufacturing.

Among the report's recommendations was creation of an Assistant Secretary of Commerce for Manufacturing and Services, and a Manufacturing Council. Another was for OMB to include in its 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations a call for public nominations of regulations that could be improved, especially those affecting the manufacturing sector.

The NAM solicited our members for suggestions, and they were very forthcoming. Our Regulatory Improvement Task Force reviewed these submissions, highlighting those that were identified repeatedly as particularly onerous. These were: the Particulate Matter (PM) and Ozone National Ambient Air Quality Standards (NAAQS); the Toxic Release Inventory; the Definition of Solid Waste; Spill Prevention Control and Countermeasures; SARA Title III; the Family and Medical Leave Act.; and the FCC "Do Not Fax" rule, which is also an issue with trade associations like the NAM.

In our comments on the Draft Report, the NAM asked OMB—specifically, the Office of Information and Regulatory Affairs (OIRA) that is charged with drafting the report—take special note of these regulations. We told OMB that improving these regulations would help manufacturing.

We also submitted another list of more technical regulations that could be improved. We made clear in our submission that these are small fixes which individually may not have much impact but collectively have a big impact.

There are two significant points I will ask you to keep in mind in considering this exercise.

First, as many of our member companies -- especially smaller companies -- will tell you, it is not one or two particular regulations that impact their productivity and ability to compete, but rather the sheer volume of regulatory requirements.

Second, these regulations are symptomatic of a prevalent attitude of indifference among legislators and federal regulators to the impact of regulations on the private sector. Government is a world in which the concepts of profit and loss have little meaning. When manufacturers speak to government officials about the impact of poorly written rules on industrial efficiency and productivity, and the excessive cost of compliance with such rules, our concerns too often fall on deaf ears. Too many members of Congress and too many regulators just don't get it.

<u>The Disparate Impact on Manufacturing</u>

As the final 2004 OMB Report to Congress on the Costs and Benefits of Federal Regulations notes, federal regulations hit the manufacturing sector especially hard.

Because manufacturing is such a dynamic process, involving the transformation of raw materials into finished products, it creates more environmental and safety issues than other businesses. Thus, environmental and workplace health-and-safety regulations have a disparate impact on manufacturers.

Another report entitled *The Impact of Regulatory Costs on Small Firms*, by Mark Crain and Thomas Hopkins, issued in 2001 by the Office of Advocacy of the Small Business Administration, makes the same point. The burden of regulation falls disproportionately on the manufacturing sector.

In this report, which is now being updated, Crain and Hopkins found that the manufacturing sector shouldered $147 billion of the $497 billion onus of environmental, economic, workplace and tax-compliance regulation in the year 2000.

Overall, Crain and Hopkins found that the per employee regulatory costs of businesses with fewer than 20 employees were $6,975, or 60 percent more than the cost per worker of $4,463 for firms with more than 500 employees.

In manufacturing, this disparity was even wider. The cost per employee for small firms (meaning fewer than 20 employees) was $16,920, or 127 percent higher than the $7,454 cost per employee for medium-sized firms (defined as 20–499 employees). And it was 140 percent higher than the $7,059 cost per employee for large firms (defined as 500 or more employees). Crain and Hopkins acknowledge that their methodology does not attempt to capture the benefits of regulation.

In December 2003, the NAM released a report, *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness,* which has received considerable attention from media, business and policy experts.

This report, which is available over the Internet at www.nam.org/costs, examined structural costs borne by manufacturers in the United States compared to our nine largest trading partners.[1] The principal finding was that structural costs—those imposed domestically "by omission or commission of federal, state and local governments"—were 22.4 percent higher in the U.S. than for any foreign competitor.

The structural costs included regulatory compliance, along with excessive corporate taxation, the escalating costs of health and pension benefits, the escalating costs of litigation and rising energy costs.

In order to determine the effect of regulation on domestic manufacturing compared to our main competitors, the NAM Report used pollution-abatement expenditures because they are the only cross-country regulatory compliance cost data available. Thus, the 22.4 percent higher structural costs that U.S. manufacturers face in comparison with our largest trading partners are significantly understated because the regulatory component includes only pollution-abatement expenditures.

Even so, just including these specific costs puts the United States at a trade-weighted disadvantage of at least 3.5 percentage points. Only South Korea's pollution-abatement costs are higher; all other U.S. trading partners, including the so-called "green" nations in Europe, have much lower regulatory costs.

[1] Canada, Mexico, Japan, China, Germany, United Kingdom, South Korea, Taiwan and France

The NAM recognizes the need for reasonable regulations, but we believe rules should be based on sound science and subjected to a strict cost-effectiveness test.

In most cases, market-based solutions can address our concerns. A market-based approach allows the agency to set a standard but also allows the regulated entities the ability to identify innovative—and probably far more efficient—ways to meet that standard than if the agency relies exclusively on "command and control" methodology and technology.

<u>"The List": What It Means, Its Importance and Next Steps</u>

When OMB released its list of regulations on March 9, there was a predictable hue and cry among some activist groups and the news media that it would lead to a reduction of environmental, worker and consumer protections.

Let's be clear. All OMB did was inform the agencies to review the nominated regulations cited in the OMB Report to see if they should be changed. It did not instruct the agencies what specific action to pursue.

The OMB said merely that administrative fixes should be done sooner rather than later, while more substantive changes should be subject to the standard notice-and-comment procedures.

Let me make one more thing clear: we do not seek to compromise the effectiveness of regulations.

Rather, we seek the review and change of regulations that are either out of date or more restrictive and costly than they need to be to achieve the desired goals.

The list, including its timetables for action, provides a guide for this subcommittee, the authorizing committees, regulated entities, other interested parties and OMB to see how—or whether—the agencies will take this exercise seriously and meet their responsibilities.

Unlike a similar undertaking in the 2002 OMB Report, this time around, the agencies will have less ability to bury the recommendations until people forget about them. At least, that is our hope.

Let's take one particular example. In 2002, the NAM nominated an OSHA regulation dealing with fire protection standards that apply when boat builders are using a specific type of resin.

While I am not expert in all of the details about this regulation, we have been informed by the National Marine Manufacturers Association, an affiliate of the NAM, that these rules are based on a 1969 consensus rule of the National Fire Protection Association, and are conspicuously out of date.

It amazes me to report to this subcommittee that nothing came of this NAM nomination for a regulatory improvement. OSHA has repeatedly been petitioned to update this obsolete fire standard and the agency has not acted. To date, OSHA has given no reason for its intransigence.

This OSHA fire standard is one of the 76 regulations on the March 9 list (Reference Number 153). At first glance, this would seem to be good news. On closer inspection, though, I ask you to observe that OSHA is not actually asked to fix this specific audacious example of a regulation in need of improvement.

To the contrary, OSHA is directed to review *all* of its "standards that are based on national consensus standards." There is no timetable. My fear is that OSHA will use the excuse that reviewing all of its standards is a big job and will once again duck such an easy and necessary fix unless this subcommittee, OIRA and other watchdogs with authority ensure that something is done.

I'd ask the subcommittee to consider, as the NAM noted in its submission to OMB last year, what OSHA's reaction would be upon entering a manufacturing facility and finding that a Material Safety Data Sheet had not been updated in 36 years. Would the inspector look the other way because it was common knowledge that handling procedures have changed?

I don't think so. Remember, this standard is in the Code of Federal Regulations, and thus it has the force of law. A marine manufacturer could, technically, be cited for not adhering to the 1969 standard.

Another regulatory improvement that the NAM suggested as a general matter is for agencies to explore making on-line forms available in multiple formats.

At a minimum agencies should either adopt a process that anybody can use in filling out a form electronically, or at least make their forms available in several formats to reduce the complexity of companies having to convert their reports into different formats.

The benefits reaped by the savings for regulated entities from not having to convert the document would far outweigh any incremental cost to the agency.

As for the seven regulations that the NAM highlighted, I am pleased to note that OMB included five on its list. As this subcommittee knows, however, the PM and Ozone NAAQS regulations are being reviewed under a separate procedure.

The only highlighted regulation not included was SARA Title III. The NAM looks forward to working with the agencies and making appropriate comments as they consider ways to improve the other regulations.

For the Do-Not-Fax Rule, of course, Congress is poised to address this legislatively.

<u>Recommendations</u>

What can this subcommittee do to assist manufacturers confronting a myriad of regulatory requirements?

1. **<u>Conduct Oversight to Ensure that Agencies Act on the March 9 List</u>. While OIRA has an established role both through statutory and executive order authority to oversee agency promulgation of regulations, it has, at best, only moral suasion in its quiver. Congress holds the power of the purse to help ensure that agencies do not ignore these recommendations.**

2. **<u>OIRA Should Have More Staff</u>. OIRA was originally authorized for about 90 staff members, and by the 1990's had been reduced to fewer than 50. It is now closer to 60. This is not sufficient. Staffing levels should be increased further.**

3. **<u>Parts of E.O. 12866 Should Be Made Statutory</u>. President Clinton issued E.O. 12866, the controlling executive order for regulatory review, in 1993. E.O. 12866 calls for sound science, cost-benefit analysis and requires that the regulatory path chosen should be the least burdensome. Congress should give this mandate statutory authority to ensure that its procedures remain in force and will give them certainty. The NAM encourages you to pursue discussions with OIRA on this score.**

4. **<u>Guidance Documents Should Be Subject to OIRA Review and Released Publicly</u>. Guidance documents, issued to inspectors and other enforcement agents, clarify the meaning of a regulation but are far too often not shared**

with the public. They are not subject to notice-and-comment and therefore can change easily. And it goes without saying that the way a rule is enforced can offer a "back door" way to changing the rule itself.

5. **<u>The Role of the Department of Commerce in Regulatory Review Should Be Clarified and Made Statutory</u>. In creating the Assistant Secretary of Commerce for Manufacturing and Services, the President included the review of regulations as part of the mandate for the Office of Industry Analysis. The existence of the office, its role in the economic analysis of major rules and how agencies should treat the analysis should be codified. As with making parts of E.O. 12866 statutory, the NAM encourages the subcommittee to begin working with the Administration on how best to achieve this recommendation.**

6. **<u>Information Quality Act Actions Should Be Judicially Reviewable</u>. The Information Quality Act (also known as the Data Quality Act) required OMB to issue government-wide standards for the dissemination of information, and then required agencies to issue their own guidelines tailored to their specific missions. The public can use the guidelines to petition for information disseminated by an agency to be revised or deleted. A recent ruling by the U.S. District Court for the Eastern District of Virginia stated that agency decisions on such petitions are not judicially**

reviewable. I am not certain that a legislative fix is necessary at this point because there may be other courts (particularly the D.C. Circuit) that may weigh in with a different finding. This issue is, nevertheless, one that the subcommittee should be aware of.

7. **<u>Sunsetting Regulations</u>. Major regulations, at least, should be sunset after 10 or 15 years and only extended if they have demonstrated their usefulness and success. Such a review would force agencies to determine how well regulations have met their goals and to see if there are any ways to improve how they work. Those regulations that are effective, of course, could and should be allowed to continue in force.**

8. **<u>Reducing the Cost of International Regulatory Differences</u>. Differences in U.S. and foreign regulatory policies and standards have become a serious trade concern for manufacturers, raising costs of market entry and preventing small and mid-size companies from exporting to foreign markets.**

   The problem is getting worse, particularly in Europe where regulatory policies are diverging widely from those in the U.S. The Administration needs to launch a major new initiative to improve international regulatory cooperation and move toward international harmonization of regulatory policies while maintaining high standards in the United States.

We believe this can be done. OIRA Administrator John Graham has spoken on this issue and expressed his concern but there is not enough concrete action.

In particular, U.S. regulatory agencies need a clearer mandate and additional resources to assess the trade impact of regulatory differences and work with their foreign counterparts to address them. It is interesting that at a time when our competitors in Europe are harmonizing their regulatory systems to eliminate conflicts, we are allowing the 50 U.S. states to move in the other direction.

***A*lthough the NAM is encouraged by the increased awareness and interest in international regulatory issues, it is time for the Administration and Congress to provide more direction and support to regulatory agencies.**

Conclusion

The vast majority of manufacturers are determined to be good corporate citizens and comply with all of the regulatory requirements that affect their companies. In order to do so, they need to understand both the need for the regulation and why certain requirements exist. They also need paperwork to be as simple as possible so that their time can be spent on more productive activities.

As one manufacturer once put it in testifying on behalf of the NAM, his children swim and kayak in the river that his factory sits beside, they play in a nearby playground, and if one of his workers got injured he would have to face that worker—or, worse, the worker's surviving spouse or children—at various locations around town. Thus, to the extent that EPA, OSHA or other agencies can help him ensure that his emissions are not threatening and that his workplace is safe, he is readily willing to incorporate those suggestions and requirements. But to the extent that they come attached with a needless amount of paperwork or production procedures that either do not work or are unnecessarily inefficient, then his ability to make a profit—and thereby provide jobs and other benefits—is compromised.

Chairman Miller, the NAM looks forward to working with you and the other members of this subcommittee to find ways to improve regulations affecting manufacturing. I would be pleased to answer any questions that you or the subcommittee may have.